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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION

PRISON LEGAL NEWS, a project of the
HUMAN RIGHTS DEFENSE CENTER,

No. 2:12-cv-01101-SU

Plaintiff,

v.

UMATILLA COUNTY; UMATILLA
COUNTY SHERIFF'S OFFICE; JOHN
TRUMBO, individually and in his capacity as
Umatilla County Sheriff, STEWART HARP,
individually and in his capacity as Umatilla
County Jail Commander; THORNE HEARN, in
his individual and official capacity,

Defendants.

**DECLARATION OF DANA L.
SULLIVAN IN SUPPORT OF
PLAINTIFF'S APPLICATION FOR AN
AWARD OF COSTS AND
REASONABLE ATTORNEYS' FEES**

DECLARATION OF DANA L. SULLIVAN IN SUPPORT OF
PLAINTIFF'S APPLICATION FOR AN AWARD OF COSTS AND
REASONABLE ATTORNEYS' FEES
(No. 2:12-cv-01101-SU) - 1
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I, Dana L. Sullivan, declare under penalty of perjury as follows:

1. I submit this Declaration in support of Plaintiff's Application for an Award of Costs and Reasonable Attorneys' Fees.
2. I have personal knowledge and am competent to testify to the facts set forth herein and I am qualified by background and experience to offer the opinions offered.

REQUEST FOR OPINION AND SCOPE OF ANALYSIS

3. I have been asked to comment and provide an opinion on the hourly rates sought by plaintiff's counsel in their motion for attorney's fees. My analysis and opinions regarding the reasonableness and appropriateness of the rates requested by counsel for plaintiff are detailed below.

QUALIFICATIONS TO OFFER OPINIONS

4. I am a 1993 graduate of the New York University School of Law, where I served on the editorial board of the Annual Survey of American Law. I have been a practicing attorney since 1995. I have been admitted to practice in the State of California and the State of Oregon since 1994 and I have been admitted to practice in the State of Washington since 2000. I am also admitted to practice before the United States District Court for the District of Oregon, the United States District Court for the Western District of Washington, and before the United States Court of Appeals for the Ninth Circuit. I am also admitted, although inactive, in the District of Columbia, as well as the United States District Court for the District of Columbia and the United States District Court for the District of Maryland. I am currently a partner with the law firm of Buchanan Angeli Altschul & Sullivan LLP.

5. From August 1993 until August 1995, after graduating from law school, I served as a law clerk for the Honorable Malcolm F. Marsh, United States District Court Judge for the District of Oregon.

6. Following my clerkship, from 1995 to 1997, I worked as an associate for the law firm of Bernabei & Katz in Washington, D.C. Bernabei & Katz is a small firm that specializes in the representation of plaintiffs in employment, civil rights and whistleblower litigation. The firm has a national reputation and during my tenure there I was involved in numerous high-profile cases involving plaintiffs such as CIA whistleblower Philip Agee and deathrow inmate Mumia Abu-Jamal and defendants such as National Public Radio and the National Institutes of Health. I also represented a number of federal employees in EEO claims and, on one occasion, served as a contract EEO investigator for the U.S. Capitol Architect's Office.

7. In September 1997, I returned to Portland, Oregon. From that time until August 2002, I worked as an associate with Hoevet, Snyder & Boise, P.C. During that time, the majority of my practice was in the field of employment and civil rights litigation.

8. In August 2002, I joined the firm of McKanna Bishop Joffe, which later became McKanna Bishop Joffe & Sullivan LLP, as a partner. My caseload included employment claims arising from violations of federal and state statutes which prohibit discrimination and sexual harassment, claims under the American With Disabilities Act, whistleblower claims, wrongful discharge, injured worker discrimination and civil rights actions under 42 U.S.C. § 1981 and § 1983. I also advised executives regarding employment contracts and severance agreements and periodically litigated contractual disputes arising in the employment context.

9. In June 2008, I formed the firm of Buchanan Angeli Altschul & Sullivan LLP, in which I am a partner. With my new firm, I continue to represent individuals in employment matters of the types detailed in paragraph 8 above.

10. Since 1997, I have been actively involved in bar activities at both the state and county level. I currently serve on the Board of the Multnomah Bar Association and I am a past president of the Oregon Trial Lawyers Association (OTLA). I served on the OTA Board of Governors for eleven years. I have also served as Chairperson of the OSB Federal Practice and Procedure Committee. I have also served as a member of the OSB's Public Service and Information Committee and as a member of the Multnomah Bar Association Young Lawyers' Section Public Service Committee. I have formerly served as Co-chair of the Employment Section, the Women's Caucus and the New Lawyers' Section of OTLA. I am also a member of the Federal Bar Association, the National Employment Lawyers Association, and Oregon Women Lawyers.

11. I have also served as a presenter at various continuing legal education programs on issues related to employment law and trial advocacy and have authored articles for professional publications regarding employment law and trial practice issues. Presentations within the last two years include the following:

- (A) Pacific Coast Labor & Employment Law Conference, May 4, 2012 – “Intermittent Leave and Social Media – Employer Dilemmas;” and
- (B) Multnomah Bar Association Continuing Legal Education Program, February 3, 2011 – “Individual Liability for Employment Discrimination: Recent Developments in Aiding and Abetting Claims Under ORS 659A.030(1)(g).”

12. Within the last year, I was also charged by the Oregon State Bar (OSB) with substantially revising the chapter in the OSB Torts publication addressing wrongful discharge claims. Publication of this revised edition is currently pending. Other recent articles that I have authored include an article for the September 2012 edition of the Oregon State Bar's Civil Rights Section Newsletter, entitled "Internal Reports of Corporate Wrongdoing: How Oregon's Whistleblower Statute, ORS 659A.199, Has Been Misconstrued."

13. I have also been recognized by my peers as a leading attorney in the areas of employment law. I have been selected for inclusion in "Best Lawyers" among attorneys representing individuals in employment matters. *Super Lawyers* has also listed me among the top 25 women lawyers in Oregon and among Oregon's top 50 lawyers.

14. I have tried cases in the Portland, Pendleton and Eugene divisions of the federal district court in Oregon. I have also tried numerous cases, both in Oregon and Washington state courts.

15. I am generally aware of the hourly rates charged by attorneys in the Portland area who specialize in employment law. I have provided expert testimony in support of fee petitions in a number of other cases. I also have prepared numerous fee petitions in my own cases, most recently in May 2012, when I filed a fee petition in the case of *Merrill v. MITCH Charter School Tigard*, Case No. 3:10-cv-00219-HA. Each time I provide an expert opinion or prepare my own fee petition, I gather information regarding fee awards in other cases so that I can cite recent opinions.

16. In 2007, I served on an ad hoc committee for the Oregon State Bar to update the Oregon State Bar Economic Survey ("Economic Survey") to ensure that data is gathered that more accurately reflects the fact that hourly rates charged by attorneys whose practice is

exclusively devoted to a particular specialty, such as employment law, are typically higher than the hourly rates charged by general practitioners.

17. My firm, which is a boutique firm specializing in employment law, is unique in that, as a firm, we represent both employers and employees in employment disputes. While I represent individual employees, my three partners provide advice and counsel to employers and routinely serve as defense counsel in litigation. Therefore, I am familiar with the rates commonly charged not only by plaintiffs' attorneys but also by comparable defense attorneys practicing in Oregon.

18. I have reviewed the Complaint, curriculum vitae for each of the attorneys and staff people about whose rates I have been asked to opine, and have communicated with plaintiff's counsel Katherine Chamberlain about the procedural history of this matter.

19. Although the general rule is that the relevant community for purposes of the prevailing hourly rate to be used in determining an attorney's fee award is the forum in which the district court sits -- in this case Eastern Oregon -- there are factors present in this case that justify the use of Portland or Seattle rates. First, this matter was a multi-party civil rights case involving not only multiple defendants but also an alleged constitutional infringement impacting a class of prisoners at a correctional institution. Second, I am not aware of any individual attorney in Eastern Oregon who handles civil rights cases. I frequently get referrals from attorneys such as Gene Hallman, Brian Dretke and Steve Hill because they do not have local colleagues to whom to refer civil rights cases. Third, the representation of prisoners regarding the alleged infringement of First Amendment or other constitutional rights is the type of case that often requires the involvement of public interest organizations, such as Human Rights Defense Center. Private practitioners are deterred from representing prisoners as plaintiffs in civil, contingency

fee cases because client communications can be logically difficult, the attorney must bear the litigations costs and there is a risk that jurors will be disinclined to award damages to individuals convicted of a crime. Fourth, plaintiff's counsel in this matter possessed expertise with the particular First Amendment issue presented, having successfully litigated similar cases against other correctional institutions. In such situations, a higher hourly rate can be offset by increased efficiencies due to the lawyers' familiarity with the applicable case law and more focused approach to discovery. In this case, the experience and reputation of plaintiff's counsel and their track record of success in similar cases may well have contributed to the early resolution of this case through an offer of judgment by the defendants.

20. It is my understanding that plaintiff's Seattle counsel is seeking compensation at the same hourly rate as the rates that they charge in matters within the Seattle area. When evaluating their rates, I am evaluating them in comparison to published rates for attorneys in the Portland area, as listed in the Economic Survey, based upon my conclusion that in this case it was necessary and reasonable for the plaintiff to seek counsel from large metropolitan areas in the region and from a national public interest organization with special expertise regarding the issues presented.

21. I know Marc Blackman, having spent several years as a member of the Gus Solomon Inn of Court, of which he is also a member. I have also worked cooperatively with Mr. Blackman within the last year representing a public employee whose actions not only led to his termination but also had potential criminal implications. Marc is among the top criminal defense attorneys in the state. In my opinion, the hourly rate of \$400 is reasonable for a litigator with his reputation, background and qualifications. That rate is well within the range for attorneys with over 30 years of practice (Mr. Blackman has been practicing for 38 years), falling between the

75th percentile and 95th percentile of hourly billing rates for Portland attorneys, according to the Economic Survey, without adjustment for inflation.

22. Although I do not know Jesse Wing personally, I am familiar with the reputation of his firm and know it to be regarded as one of the top firms in Seattle representing plaintiffs in civil rights matters. I have also reviewed information detailing Mr. Wing's background, education and experience, which in many ways is similar to mine, although he has been in practice two years longer than I. In my opinion, the hourly rate of \$400 is also reasonable for work he performed on this case. While Mr. Wing's rate is \$1 per hour higher than the 95th percentile of rates for Portland attorneys who have been in practice for 21 to 30 years, the higher rate is justified given his skill and expertise and his history of successful litigation of cases brought by the same plaintiff. From my review of the National Law Journal survey of hourly billing rates of law firms nationwide, it appears that Mr. Wing's rate is consistent with Seattle rates, which are slightly higher than hourly rates in Portland. Again, it was reasonable and necessary for the plaintiff in this case to seek counsel outside of Oregon as Mr. Wing brought to the case a unique perspective that was not available through Oregon counsel, given his experience litigating similar cases.

23. Although the work that I do is primarily contingent-fee plaintiff's work, I do regularly handle hourly matters for individual clients. I charge \$375 as my standard market rate for this hourly work, and have not charged any client less than \$375 for hourly work during 2011 or 2012. I intend to increase my rate to \$395 as of January 1, 2013. Mr. Wing's rate is in line with mine, taking into account his additional years of experience.

24. Plaintiff is seeking an hourly rate of \$300 for work performed by Katherine Chamberlain. Katherine not only currently works for the well-regarded firm of MacDonald

Hoague & Bayless, but she also worked as an associate for Walters Chanti & Zennache P.C., in Eugene, Oregon. She shares Ms. Wing's experience working on a series of First Amendment prison censorship cases brought by the same plaintiff and is an accomplished attorney with an excellent reputation. In my opinion, the hourly rate of \$300 is reasonable for Ms. Chamberlain, as it falls within the 75th to 95th percentile range for attorneys in the Portland area.

25. In my opinion, the hourly rate of \$210 that plaintiff seeks for work performed by Alissa Hull is reasonable in light of her experience. Although only admitted to practice in 2010, Ms. Hull has worked with the National Lawyers' Guild's Prison Law Project since 2007, for much of that time as a Haywood Burns Fellow. For this reason, I think it is reasonable for her to charge an hourly rate that is close to the 95th percentile rate of \$216, particularly on this case which involved issues with which she has had experience for approximately five years.

26. Plaintiff's counsel has also asked me to offer an opinion regarding the reasonableness of the hourly rates for legal staff who worked on this matter. It is my understanding that plaintiff seeks an hourly rate of \$150 per hour for work performed by paralegal Carrie Wilkinson; \$90 per hour for work performed by Kara McBride; \$105 per hour for work performed by Zach Phillips of the Human Rights Defense Center; and \$75 per hour for work performed by Jen Kovacs of the Human Rights Defense Center. It is my opinion that the rates sought for each of these legal staff persons are reasonable. While I recognize that the rates sought for Ms. Wilkinson are higher than the rate of \$100 per hour awarded by this court and other judges in this judicial district for paralegal services, Ms. Wilkinson is a highly-experienced paralegal who has experience working on similar cases handled by plaintiff's counsel. As noted above, it is fair to assume that her experience in these other matters makes her a uniquely valuable staff person to work on this case and that her familiarity with the subject matter and the

firm's approach pursuing these cases enables her to be more efficient, thereby offsetting to some degree the higher hourly rate.

27. Civil rights cases are both legally and factually complex. The law is frequently changing and new issues are continually developing. Attorneys who specialize in this area are required to spend numerous hours, for which they are not compensated, reviewing practice guides, court decisions, bills and legislative history to keep abreast of new developments. Moreover, those who represent plaintiffs in civil rights matters generally do so on a contingency fee basis. Cases in which an attorney has invested a substantial amount of time are occasionally lost or result in an attorney fee that is substantially less than the attorney's hourly rate. Even if the plaintiff ultimately prevails, litigation can take two years or more to reach a conclusion, especially in federal court.

I declare under penalty of perjury that the foregoing statement is true and accurate to the best of my recollection.

Dated this the 18th day of September, 2012.

BUCHANAN ANGELI ALTSCHUL &
SULLIVAN LLP


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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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DATED this 31st day of October, 2012.

MACDONALD HOAGUE & BAYLESS

/s/ Katherine C. Chamberlain

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